

06136

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

BOBBY NEWCOMB,

Plaintiff,

- vs -

Case No. 88913-8 T.D.

R.J. REYNOLDS TOBACCO COMPANY, and
THE BROWN AND WILLIAMSON TOBACCO
COMPANY, as successor by merger to
THE AMERICAN TOBACCO COMPANY,

Defendants.

Before: The Honorable D'Army Bailey

TRANSCRIPT OF PROCEEDINGS

March 29, 1999
(Morning Session)

Volume 40

ALPHA REPORTING CORPORATION
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06137

EDITH KARNEY, Individually, and
On behalf of the Estate of
JAMES WILEY KARNEY,
Plaintiffs,

- vs -

Case No. 89196-8 T.D.

PHILIP MORRIS, INC., and
PHILIP MORRIS COMPANIES, INC.,
Defendants.

RUBY SETTLE, Individually, and
On behalf of the Estate of
RAYMOND SETTLE,

Plaintiffs,

- vs -

Case No. 89226-8 T.D.

B.A.T. INDUSTRIES, PLC; BATUS HOLDINGS,
INC.; BROWN & WILLIAMSON TOBACCO
CORPORATION; BRITISH AMERICAN TOBACCO
COMPANY, L.T.D.,

16

Defendants.

17

18 DENISE McDANIEL, Individually,
and On behalf of the Estate of

19 FLORENCE BRUCH,

20 Plaintiff,

21 - vs -

Case No. 90832-8 T.D.

22

BROWN AND WILLIAMSON TOBACCO

23 CORPORATION, and

PHILIP MORRIS, INC.,

24

Defendants.

25

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(At 10:30 a.m., on the 29th day of
March, 1999, Court met, pursuant to adjournment,
when and where the following proceedings occurred,
to wit:)

(Out of the presence of the jury.)

THE COURT: Good morning.

You may resume the witness stand.

THE LAWYERS: Good morning, Your Honor.

THE COURT: All right. Are you all ready
for the jury?

MR. WILNER: Yes, Your Honor.

MR. JAMES JOHNSON: Yes, Your Honor.

(Whereupon, the jury was seated in the
jury box.)

THE COURT: Good morning, ladies and
gentlemen. Thank you very much for your courtesy
in being back in a timely manner this morning for
us to continue. And when we finished last
Thursday, Mr. Wilner was in his cross-examination
of Dr. Townsend.

Dr. Townsend, you're still under oath
from last week.

And, Mr. Wilner, you may continue.

THE WITNESS: Yes, Your Honor.

MR. WILNER: Thank you, Your Honor.

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1 DAVID TOWNSEND,

2 having been previously duly sworn by the Clerk to
3 tell the truth, the whole truth and nothing but the
4 truth, returned to the witness stand and testified
5 as follows:

6 CROSS-EXAMINATION (Cont'd.)

7 BY MR. WILLNER:

8 Q. Good morning, Dr. Townsend.

9 A. Good morning.

10 Q. Did you have a chance over the weekend to
11 discuss your testimony with any of the attorneys?

12 A. No, I didn't.

13 Q. Did you have a chance to discuss the
14 question of whether the lung cancer epidemic is
15 getting worse or better with any of the people at
16 R.J. Reynolds?

17 A. No, I didn't.

18 Q. Did you have a chance to look at any of
19 the research materials that you have to address
20 that question?

21 A. No, sir.

22 Q. Do you have as a result of -- And, again,
23 I'm just trying to see whether we can move forward
24 at this point. But do you have anything that you
25 researched over the weekend that you want to tell

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1 us about that's different from what we talked about
2 yesterday or Thursday?

3 A. No, sir. Not that I'm aware of. Worked
4 in my yard this weekend.

5 Q. Okay. Good. So let's go forward then.
6 You mentioned on direct examination that Reynolds
7 has designed some product you call Premier.
8 Remember that?

9 A. Yes.

10 Q. You took it apart. It had a little piece
11 of metal in it and so forth, right?

12 A. There was an aluminum capsule inside the
13 Premier that contained alumina substrate.

14 Q. And, in fact, there was a testing program
15 that went along with the marketing or rather the
16 manufacture of this Premier, right?

17 A. We had extensive testing programs that
18 went along with the development process. We
19 published that testing in the Premier monograph,
20 which I think we talked about in my direct
21 examination.

22 Q. Okay. I want to hand you a document
23 that's entitled "Premier Cigarette Science
24 Summary," and consists of maybe about 60 pages.

25 Recognize that?

06143

1 A. Yes.

2 Q. Is that a part of this testing and
3 development program of Premier?

4 A. This is excerpts from the extensive
5 testing. As I said, we have a Premier monograph
6 which includes all the data.

7 Q. All right. Well, this is in a form that
8 has kind of summary. This is kind of a summary
9 form, right?

10 A. I believe this is a summary of some of
11 the data. It looks like it's in a form and
12 probably ready for presentation.

13 Q. Okay. So -- And that's produced by
14 Reynolds, right? You recognize that?
15 A. This has been produced by Reynolds in
16 litigation.
17 Q. Says, "Produced by RJRTC." And this one
18 says Moore, which I guess is some other case,
19 right?
20 A. Yes.
21 MR. WILNER: We'd offer that next number.
22 THE COURT: Any objection?
23 MR. JAMES JOHNSON: No objection,
24 Your Honor.
25 (Whereupon, Exhibit Number 265 was marked

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1 for identification.)
2 Q. BY MR. WILNER: All right. And,
3 Dr. Townsend, I would like to -- I would like you
4 to turn to -- Unfortunately these pages aren't
5 numbered. So why don't I put it up. And I'm sure
6 you'll recognize it in its big type. I'll try to
7 read -- I don't know what page number it is.
8 What this says is "Mainstream smoke."
9 And it gives a list of tests: Assay, Ames, HGPRT,
10 SCE, CA and UDS. All alphabet soup. Do you see
11 that? I think it's about halfway back. But
12 unfortunately these pages weren't numbered as we
13 got them.

14 You might look at 6196 as the last four
15 digits.

16 A. 6196 appears to be different.

17 Q. Try 6198.

18 A. I'll keep looking.

19 Q. 6198.

20 A. Okay.

21 Q. Okay. And "mainstream" refers to
22 mainstream smoke, right?

23 A. That's right.

24 Q. And these are tests that are called
25 toxicologic tests that are run on mainstream smoke,

06145

1 true?

2 A. These are laboratory biological tests.

3 Q. And a biologic test is a test that uses a
4 biologic system, either an in vivo system, in the
5 animal itself, or an in vitro system, which is a
6 tissue culture, true?

7 A. I think in general that's fair.

8 Q. And, in fact, these are a group of tests
9 that have been developed over the years, not just
10 for cigarette products, but for, really, cosmetics,
11 food, anything that's going to be in contact with
12 the human body, true?

13 A. I think some of these tests have been
14 used for in other industries like in cosmetics, as
15 you suggest.

16 Q. And the -- This column here says assay,
17 a-s-s-a-y. That really means test, right?

18 A. That would be the biological test or the
19 laboratory test that's performed.

20 Q. And these are the names of the tests.
21 One is called Ames. One is called HGPRT. One is
22 called SCE. One is called CA. And one is called
23 UDS, right?

24 A. That's right.
25 Q. These are just abbreviations for these
06146
1 different laboratory tests, right?
2 A. That's right.
3 Q. And over here there's a column that says
4 "Ref," and that is the reference cigarette that
5 this new cigarette, which is your mechanical
6 cigarette, is tested against, true?
7 A. That would be a tobacco-burning reference
8 cigarette.
9 Q. And this gives basically a summary of the
10 results of the test, right?
11 A. In a general sense. It just indicates
12 whether positive or negative results are observed
13 in the test. There's no quantitation in this
14 particular chart, although quantitation exists.
15 Q. Now, the Ames test is a test of the
16 ability of a substance to cause genetic mutations
17 in a particular line of bacteria, true?
18 A. I think in general that's fair. I'm, you
19 know, not an expert in the area of biology. But
20 the Ames test is a mutagenicity test using a
21 particular strain of material.
22 Q. And the SCE down here, that's called
23 sister chromatid exchange, right?
24 A. That's right.
25 Q. And that is another test of the ability

06147
1 of the substance to cause chromosome mutations,
2 true?
3 A. I don't know the details of it. Sister
4 chromatid exchange is a measure where -- that we
5 use in the laboratory. I don't know the details
6 about what that means.
7 Q. Well, somebody picked out these five
8 tests as being interesting for some reason, right?
9 A. Our experts in the laboratory, in fact,
10 have picked out, not only these tests, but a number
11 of others to try to compare the changes that we've
12 made in cigarettes to see if there are any
13 differences in biological activity.
14 Q. And --
15 A. These are some of those tests.
16 Q. And the significance of the Ames test or
17 the SCE is that they involve chromosome mutations,
18 and chromosome mutations are thought to be related
19 to carcinogenesis or the production of cancer,
20 true?
21 A. I think there's some thought in the
22 scientific community that -- that chronic diseases
23 like tumor production might be a result of
24 chromosome damage. I'm not an expert in this
25 area. You know, I think just from a superficial

06148
1 point of view, that's about what I know about it.
2 Q. Well, is it fair to say then if a food
3 substance is tested using this protocol involving
4 Ames and sister chromatid exchanges and others,
5 that what people would be testing it for is its
6 ability or its possibility that it might cause
7 cancer?
8 A. Again, I think, you know, I've pretty

9 much told you all I know about those assays.
10 They're mutagenicity tests. The Ames mutagenicity
11 and sister chromatid exchange, I think, relate to
12 some thinking that chromosome damage may be related
13 to tumor production.

14 Q. Chromosome --

15 A. That's really all I know about it.

16 Q. Yeah. Okay. Well, and chromosome
17 damage -- When you say chromosome damage, is it
18 your -- Well, I'll go on from there. We'll come
19 back.

20 You'll see in this column that the
21 Premier -- which is the one we've been talking
22 about, the one with the metal thing in it -- tested
23 negative for these cancer tests, true?

24 A. Well, again, I don't know that these are
25 cancer tests. These are a variety of different

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1 assays that may relate to different aspects of
2 tumor production. We don't know that for sure.

3 The Premier product, however, did show
4 negative results in these tests. It also showed a
5 major reduction in mouse skin painting tests and
6 others.

7 Q. Now, the date that this was published was
8 when, 1988; is that right?

9 A. I think that's fair.

10 Q. Okay. And what I'm interested in here is
11 what this reference cigarette is. First, let me
12 ask you, the reference cigarette tested positive on
13 the Ames test, right?

14 A. That's right. Tobacco-burning cigarettes
15 test positive on the Ames mutagenicity.

16 Q. And testing positive on that test is like
17 failing that test, right?

18 A. No. That's not true. There's an
19 Ames -- If you see mutagenic activity in the Ames
20 test, there are different degrees. And, in fact,
21 if you remember that the National Cancer Institute
22 used the Ames test to compare the results in a
23 quantitative fashion and see what directions might
24 lead to less hazardous cigarettes.

25 Q. Well, we'll go through the amount. But

06150

1 you won't agree that it's bad to test positive on
2 the Ames test?

3 A. That's not what I said. Obviously -- And
4 the reason that we believe Premier performed so
5 well in biologic testing is that we saw a negative
6 result. That's better than testing positive. All
7 I'm saying is that there are differences when one
8 looks at the quantitation of Ames.

9 Q. Well, we'll look at that in a minute.
10 And, now, the SCE, the sister chromatid -- Actually
11 sister chromatids are parts of chromosomes, right?

12 A. That would be my general understanding.

13 Q. And when something called a sister
14 chromatid exchange happens, it means that actually
15 a piece of one chromosome got swapped with a piece
16 of another?

17 A. I really don't know.

18 Q. Who does know?

19 A. Our experts in the biology department and

20 toxicology department know very well. I think
21 experts outside of R.J. Reynolds also know very
22 well.

23 Q. So the SCE test was a positive test also
24 which wasn't good, right?

25 A. Well, again, comparing the

06151

1 tobacco-burning reference product, we see positive
2 results in SCE or sister chromatid exchange. We
3 see a negative result for the Premier cigarette.

4 Q. Let's ask you then, which one of your
5 cigarettes was this?

6 A. That particular reference? Is that your
7 question?

8 Q. Sure.

9 A. That was a Kentucky reference, 1R4F, I
10 believe.

11 Q. What is a Kentucky reference?

12 A. A Kentucky reference cigarette is one
13 that the University of Kentucky -- And 1R4F, in
14 fact, was co-developed between the University of
15 Kentucky and the National Cancer Institute and
16 USDA, U.S. Department of Agriculture.

17 The goal there is to provide a stable
18 tobacco-burning cigarette that doesn't change over
19 time so that scientists can use that product and
20 make direct comparisons to it over time and then
21 help draw conclusions. So it's a cigarette that
22 doesn't change. It's used as a reference for
23 scientific studies.

24 Q. Well, where is the test on the Winston?

25 A. Actually, we've conducted many, many of

06152

1 these tests on Winston, Camel and other of our
2 products, as well as some of our competition's
3 products. That's not the point of this chart.

4 Q. I didn't ask you what the point of the
5 chart was. I'm going to try to move through this
6 as fast as I can. I want to know where is the test
7 on the Winston?

8 A. In this particular chart it's not
9 present. However, we've conducted that many times.

10 Q. Where is it published?

11 A. We've published and presented results on
12 many of these assays for commercial products.

13 Q. Where?

14 A. In various places, in peer-reviewed
15 literature, in presentations similar to this where
16 we've compared new cigarettes versus
17 tobacco-burning cigarettes.

18 Q. Excuse me. I wasn't talking about
19 tobacco-burning cigarettes like that. I was
20 talking about a Winston. Where have you published
21 the results of the Ames test on the Winston
22 cigarette that you sell?

23 A. Again, this is not an area that I focus
24 on. But I know that we've published and presented
25 Ames test results on a variety of products over

06153

1 many years.

2 Q. And what is the result? Does a Winston
3 pass or fail?

4 A. I don't know what you mean by "pass" or

5 "fail." Tobacco-burning cigarettes, including
6 Winston and Camel, show positive results in the
7 Ames. It shows mutagenic activity, which is
8 exactly why we've tried to develop products that
9 don't.

10 Q. Well, does a Winston do better than a
11 Salem on the Ames cancer test or worse?

12 A. I don't know what "better" or "worse"
13 is. My -- You know, they both showed positive. I
14 think there's a number of things that -- they're
15 clear in Ames that -- For example, the use of
16 reconstituted tobacco and higher levels of
17 reconstituted tobacco reduces Ames activity. We've
18 seen that. The National Cancer Institute has seen
19 that. A number of other cigarette design changes
20 have influenced and reduced the Ames activity. But
21 the Ames activity for tobacco-burning cigarettes is
22 positive.

23 Q. Now, you just said something before. You
24 said you didn't know what was better and what was
25 worse. Do you mean that?

06154

1 A. Well, you asked me a question of which
2 product is better --

3 Q. Yeah.

4 A. -- and which product is worse.

5 Q. On the Ames test.

6 A. And, yes, I mean that very clearly. I
7 don't know. If you're asking which of these are
8 products is less hazardous or not, I don't know.

9 Q. Well, I didn't go all the way to that
10 question, although I will ask you that question in
11 a minute. I'm just talking about one test.

12 You say you published the results of this
13 Ames cancer test somewhere when you tested your
14 products. How does the Salem do versus a Winston?
15 Can you tell me?

16 A. I said I don't know.

17 Q. All right.

18 A. We've clearly published the results of
19 many different studies and presented the results of
20 studies.

21 Q. Can you produce any?

22 A. We used Ames mutagenicity testing
23 internally extensively.

24 Q. Can you produce a single test that was
25 released to the public that shows what the values

06155

1 for Winston, the values for Salem, the values for
2 Winston Select and your commercial brands? Where
3 are they?

4 A. Again, we've published and presented Ames
5 activity data. If you want to dig and find results
6 comparing these products, I'm sure that we can
7 generate a lot of data. You know, this is really
8 outside of my area to compare details of these
9 studies.

10 Q. Wait.

11 A. We used them for product development, as
12 guidance and example that this chart where our goal
13 is to reduce biological activity, and we did that
14 in Premier very clearly.

15 Q. You said you would generate it if I asked

16 for it. And what I'm trying to clear up is whether
17 you released this to the public, and I don't mean
18 on this chart because this chart we see. I mean --
19 THE COURT: Excuse me, please.
20 MR. JAMES JOHNSON: Your Honor, this
21 is --
22 MR. WILNER: I haven't finished,
23 Your Honor.
24 THE COURT: All right. Well, you stop
25 when the Court says "excuse me" whether you're
06156
1 finished or not.
2 MR. JAMES JOHNSON: Your Honor, this
3 question -- this very question has been asked and
4 answered about three times already.
5 THE COURT: Sustained. Move on.
6 Q. BY MR. WILNER: Let me turn your
7 attention to this chart. This is about three pages
8 down. Now, this says this test is squamous cell
9 metaplasia of the larynx in an inhalation test.
10 A. You said three pages down? Okay. I see
11 it.
12 Q. Something like that.
13 A. Okay. I see it.
14 Q. You see that?
15 A. Yes.
16 Q. What's the purpose of testing a rat
17 to -- and doing an inhalation study and seeing
18 whether there's metaplasia?
19 A. Well, again, you're outside my area. I
20 don't understand exactly what metaplasia is. My
21 general understanding, however, is that there are
22 cellular changes that occur in the oral cavity and
23 upper respiratory tract. And squamous cell
24 metaplasia of the larynx is the measure of those
25 cellular changes. Beyond that I don't know.
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1 I do know that on inhalation with animals
2 such as rats, hamsters we don't see tumors, but we
3 do see changes in the lining.
4 Q. And metaplasia, is that considered a step
5 towards cancer?
6 A. Sir, I just told you I don't understand
7 that.
8 Q. You don't understand?
9 A. You're asking the wrong person.
10 Q. Okay. So R.J. Reynolds decided to test
11 this new cigarette, as you call it, and publish the
12 results of squamous cell metaplasia of the larynx,
13 correct?
14 A. That's right.
15 Q. And for high exposure and medium
16 exposure, the reference got five pluses?
17 A. That's right. Cellular changes as a
18 result of inhalation from smoke from
19 tobacco-burning products.
20 Q. And which reference is this?
21 A. I believe that's 1R4F Kentucky reference
22 again.
23 Q. Where does it say that?
24 A. If you go back to the Premier monograph,
25 I think it's clear.
06158

1 Q. The reference -- Let me show you this
2 page. This is 6171.
3 A. All right.
4 Q. Now, this says, "Testing strategy
5 comparative"?
6 A. Right.
7 Q. Then it gives reference cigarettes?
8 A. Right.
9 Q. University of Kentucky, 1R4F. And then
10 there's another one called RJRT. What's that?
11 A. That's correct. As I've already
12 indicated, we've done similar studies with
13 tobacco-burning commercial products. And that's
14 what that indicates, RJRT product.
15 Q. I'm sorry. I thought you said before
16 that we just looked at the five pluses on the
17 inhalation test with the rat was the Kentucky; you
18 said that?
19 A. That's correct. And I believe that to be
20 true.
21 Q. All right. Now, what about the RJRT?
22 A. We've done comparisons with some
23 commercial products as well.
24 Q. And where are they?
25 A. They're in -- In fact, some of the data
06159

1 is in the Premier monograph. Some of the data has
2 been published and presented in other places.
3 Q. And how did it do on the inhalation
4 tests?
5 A. The commercial products, tobacco-burning
6 products like Camel Lights or Winston Lights
7 performed very similar to the 1R4F. The advantage
8 of using the reference product is, in fact, to
9 provide a reference for scientists that doesn't
10 change. The Camel and Winston products in
11 commercial production undergo minor changes over
12 time that makes comparisons very difficult for
13 scientists.
14 Q. Did the commercial product get a
15 five-plus on high, medium exposure for the 90-day
16 inhalation?
17 A. That's what the chart shows.
18 Q. The commercial product did?
19 A. Oh, this is the reference.
20 I would have to go back and look.
21 Q. Well, don't you have the Premier science
22 survey with you?
23 A. I've already said that I think that the
24 commercial products performed very similarly to the
25 Kentucky reference.

06160
1 Q. So you would agree that the commercial
2 product would score a five on this metaplasia test?
3 A. Sir, I think the commercial products
4 performed very similarly to the 1R4F Kentucky
5 reference.
6 Q. And that includes the commercial products
7 that you say you have adjusted or improved over the
8 years, still hitting a plus-five?
9 A. We used commercial products in 1988 and
10 the several years before that when we were
11 developing these Premier products.

12 Q. Is there any higher, any worse score than
13 a five-plus?

14 A. I don't know.

15 Q. Did you ask?

16 A. No.

17 Q. Now, you say now that the Premier science
18 summary or the Premier monograph identifies the
19 commercial product. Is that what you said?

20 A. No. I don't think that's exactly what I
21 said. What I said was there's some data in the
22 Premier monograph, as I recall, where we looked at
23 some commercial products. We have run extensive
24 biology on a variety of commercial products
25 including Camel and Winston. Those data have been

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1 published and presented elsewhere.

2 Q. "Elsewhere" being?

3 A. Peer reviewed -- peer-reviewed articles.
4 And we've published it at scientific and presented
5 it at scientific meetings.

6 Q. And identified it as Winston and Camel?

7 A. We've identified products as commercial
8 products. It may be identified as lights,
9 commercial products or otherwise.

10 Q. Now, you also tested your reference
11 cigarette for unrestrained cell growth, DNA?

12 A. I am not familiar with that measure.

13 Q. Okay. Did you test it for urine
14 mutagenicity --

15 A. Yes.

16 Q. -- in humans?

17 A. Yes. We did a switching study looking at
18 urine mutagenicity.

19 Q. And how did the humans do smoking your
20 commercial cigarettes?

21 A. There was biological activity. There was
22 mutagenicity, as there is with any tobacco-burning
23 cigarette. With the tobacco-heating cigarette,
24 however, there was no mutagenicity in urine, as I
25 recall, or no increase.

06162

1 Q. And do all the commercial products you
2 sell have the same amount of urine mutagenicity or
3 changes in the -- or the ability of the smoker's
4 urine to induce cellular changes? Do they all have
5 the same?

6 A. Well, I don't know. This is -- I mean,
7 this is an area that I really don't know much
8 about. I know many things, in fact, drive urine
9 mutagenicity like diet, eating cooked meats, for
10 example. And I know cigarette smoke does increase
11 urine mutagenicity. I would assume there's a
12 relationship with the level of tar, however.

13 Q. Now, this whole question of doing
14 biologic testing like you did here, that's been
15 something that has been an issue at R.J. Reynolds
16 for quite some time; is that true?

17 A. I don't know what you mean "issue." We
18 have an extensive biology and toxicology
19 department. We develop assays for comparing
20 cigarettes that we develop and comparing them to
21 current commercial products and reference
22 products. We've developed the assays or apply the

23 assays to cigarette smoke. We work with the
24 scientific community and take assays that others in
25 the scientific community have developed, try to

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1 modify them and adapt them to the use of the
2 cigarette smoke. We have an extensive effort.

3 Q. And do you claim that you improve your
4 product through this testing?

5 A. We have to have -- Just like chemistry,
6 the biology has to be in place so we can compare
7 the results of the changes that were made.

8 As a product developer, I go out and make
9 all these changes to a product. I have a
10 particular prototype. I want to know what kind of
11 difference I've made. So we look very closely at
12 the chemistry, and we look very closely at the
13 biology to see if we see differences in the biology
14 to make some overall judgment about whether we're
15 moving in the right direction toward developing a
16 safer cigarette.

17 Q. So you can then tell us that you did
18 specific tests which resulted in improvements to
19 the Winston and Salem brand cigarettes?

20 A. What I'm -- What I'm telling you is that
21 we use comparative biology like Ames mutagenicity,
22 sister chromatid exchange, mouse skin painting
23 studies and others to understand the impact of our
24 design changes in an attempt to make safer
25 cigarettes. No question about it.

06164

1 Q. I guess I wasn't clear when I asked you.
2 Are you claiming that you changed the Winston
3 cigarette by virtue of some biologic test you did?

4 A. What I'm saying is we used the biology to
5 measure the changes that we've made to see whether,
6 first of all, do these design changes reduce the
7 biology and also do they reduce the chemistry. We
8 also use the biology test to make sure the changes
9 we make in commercial products don't somehow
10 increase the biological activity.

11 Q. So let me ask you, have you ever made a
12 recommendation that one of your commercial products
13 be changed on the basis of toxicologic or biologic
14 testing?

15 A. Me personally?

16 Q. I have to ask you.

17 A. I can't recall ever making that
18 recommendation.

19 Q. Okay.

20 A. I have used biology and chemistry
21 extensively with the help of the experts in biology
22 to see whether what we're doing is going in the
23 right direction in the new product development that
24 I'm responsible for.

25 Q. And the new product development you're

06165

1 responsible for includes what?

2 A. There's a variety of projects that we're
3 working on. Many of those are proprietary. And I
4 wouldn't want my competition, frankly, to hear
5 about that.

6 One of the major efforts that I
7 personally have been involved in over the last year

8 is, in fact, trying to improve the Eclipse. It's
9 not doing well in the test market right now. We've
10 gotten some very specific direction from smokers in
11 the test market and from scientists, and I have
12 focused on trying to incorporate those improvements
13 in the product.

14 Q. And Eclipse is another mechanical
15 cigarette?

16 A. I don't know what you mean by
17 "mechanical." Eclipse is clearly a cigarette that
18 heats tobacco rather than burning tobacco. But
19 actually to improve the performance of Eclipse we
20 had to actually burn a very, very small controlled
21 amount of tobacco to get better test. But it
22 primarily heats tobacco.

23 Q. Was Eclipse ever offered to
24 anybody -- any of the plaintiffs or their loved
25 ones in this lawsuit?

06166

1 A. I don't know. It's been in the test
2 market for over two years. I don't know the
3 details of the plaintiffs' history.

4 Q. It was in test market where? In
5 Chattanooga?

6 A. It is presently in Chattanooga, has been
7 for the duration. We also have a test market in
8 Lincoln, Nebraska. And we have a small test market
9 in Atlanta.

10 Q. Well, let me -- Now, remember I asked you
11 just a minute ago, I said, "This business of
12 biologic testing has been an issue at Reynolds for
13 years." And then you gave some answer. So let me
14 go back to that.

15 Did Alan Rodgman in 1964 recommend that
16 the company do biologic testing?

17 A. I'm not certain about the date. I know
18 there have been proposals to increase the
19 biological testing effort in the early days. You
20 know, if you have a document you want to talk
21 through, that's fine.

22 Q. Sure. All right. Dr. Townsend, let me
23 produce a copy of a document which has already been
24 marked in evidence, but I don't know the evidence
25 number. It's called "An Analysis of Cigarette

06167

1 Smoke Condensate: A Summary of an Eight-year
2 Summary," by Alan Rodgman. Thanks.

3 MR. JAMES JOHNSON: That's Exhibit 144,
4 Your Honor.

5 MR. WILNER: Thank you.

6 Q. BY MR. WILNER: Okay. Let me ask you to
7 turn to page 60.

8 A. Okay. I'm there.

9 Q. All right. The bottom of the first
10 paragraph. First, Alan Rodgman, he was a scientist
11 at Reynolds that you know well, right?

12 A. He was a chemist that worked at Reynolds
13 for a number of years. He's retired now.

14 Q. A chemical analysis which indicates a
15 decrease in the concentration of each and every one
16 of these components -- And he's talking about
17 the --

18 A. I'm sorry. Where are you reading from?

19 Q. This is the bottom of the first
20 paragraph.
21 A. Thank you.
22 Q. I'm sorry. The bottom of the last
23 paragraph. "A chemical analysis," on page 60,
24 "which indicates a decrease in the concentration
25 of each and every one of these components or groups
06168

1 of components does not necessarily demonstrate in
2 any way that the cigarette is safer biologically to
3 the host. Some smoke components not determined may
4 have increased in concentration to cause a totally
5 unexpected effect. At the risk of being
6 repetitious, the only meaningful assessment of the
7 relative toxicity of the smokes from different
8 cigarettes is a biologic assay" -- assay, just like
9 we saw here. True?

10 A. I think in general I agree with exactly
11 what he said here. If you see changes in chemistry
12 in a complex system like cigarette smoke, you don't
13 necessarily know just based on the chemistry alone
14 that you're headed in the right direction. But
15 take that chemistry together with a variety of
16 assays, and one can then make some judgment about
17 whether you're moving in the right direction.

18 The National Cancer Institute understood
19 that very clearly. We -- Our scientists understand
20 that very clearly. And, in fact, in biological
21 assays we see some assays with certain change in
22 the cigarette. Some assays go up and others go
23 down. So it's not a complete -- it's not a very
24 clear picture sometimes, so scientists have to make
25 judgments.

06169

1 Q. Now, back in 1964 and 65 the company put
2 together what they call the Biologic Research
3 Division, correct?

4 A. I'm not sure exactly when it was formed.
5 There was a Biological Research Division at
6 Reynolds.

7 Q. And there was a gentleman named
8 Joseph Baumgartner who testified at this trial by
9 deposition who was a member of that Biologic
10 Research Division. Are you aware of that?

11 A. I'm aware of him. I don't know him. But
12 I'm aware of him.

13 Q. And, in fact, there were inhalation
14 experiments that were done on various laboratory
15 animals in the Biologic Research Division at
16 Reynolds. Do you remember that?

17 A. I've seen some documents where there were
18 experiments conducted to try to develop assays
19 because at that time we didn't have any good assays
20 to compare cigarette smoke, mainstream smoke. So I
21 know they were doing exploratory work at the time.
22 Beyond that I really don't know any details.

23 Q. Who is Dr. Murray Senkus?

24 A. Well, Senkus was a scientist who
25 ultimately became director within the Research and

06170

1 Development department.

2 Q. And who is Elliot [sic] Nielson?

3 A. Neilson, I don't know him. But I think

4 he was in Biological Research Division.
5 Q. All right. Let me hand you another
6 document. Is this a research report from
7 R.J. Reynolds?
8 A. Yes.
9 Q. Does it say "confidential" on it?
10 A. Sure, like almost all of our documents
11 do.
12 MR. WILNER: I'll offer it next.
13 MR. JAMES JOHNSON: No objection.
14 THE COURT: All right.
15 (Whereupon, Exhibit Number 266 was marked
16 for identification.)
17 Q. BY MR. WILNER: Let me ask you -- I'm
18 sorry. On page 1, "The chronic exposure of rats to
19 smoke is continuing. The number of exposures was
20 increased to two a day on July 16, 1968. Three
21 rats were lost after bleeding. Tissues were
22 taken. No gross pathology.
23 "The histology of the tissues from the
24 rat which had smoked Tempo" -- What was Tempo?
25 A. Tempo was a cigarette that R.J. Reynolds
06171
1 marketed.
2 Q. "Via an indwelling tracheal cannula has
3 been completed with the results given on the
4 following page."
5 Following page -- "A diffuse, marked
6 emphysema throughout the lungs; deposition of
7 pigment tear [sic] in lung tissue, mediastinal
8 lymph nodes and tracheal" -- I can't read
9 it -- "adnexia; lymphocyte infiltration and
10 frequent epithelial hyperplasia in trachea and
11 bronchioles." Do you see that?
12 A. I see that.
13 Q. Do you have any reason to quarrel or to
14 contest that the biologic inhalation experiment
15 done all the way back in 1968 produced a diffuse,
16 marked emphysema throughout the lungs of these test
17 animals?
18 A. Well, I'm really not an expert in this
19 area. I do know that this -- this research group
20 was trying to develop new means for exposing
21 animals, new techniques for exposing animals to
22 cigarette smoke, you know, for developing new
23 biological assays.
24 I do know an indwelling tracheal cannula
25 is not a direction that scientists inside the
06172
1 industry or outside the industry in general have
2 taken for cigarette smoke. Beyond that I really
3 don't know.
4 Q. Okay. And what happened to the Biologic
5 Research department at Reynolds in 1970?
6 A. That particular biological research
7 effort was closed largely because -- If you look at
8 this particular document that you just handed me, a
9 large part of their work involved starch, starch
10 research. And we sold a subsidiary that was a
11 starch company. So we didn't need to do that
12 research anymore.
13 There was also a variety of other
14 programs looking at herbicides and insecticides

15 which then was going to be done at other places.
16 So that unit was closed.
17 Q. Well, I wasn't so interested in the
18 starch. I was interested in the smoking inhalation
19 studies.

20 A. I understand.

21 Q. Is it your understanding that in 1970 the
22 laboratory was abruptly closed and 26 scientists
23 were released and their lab notebooks confiscated
24 by lawyers?

25 A. Well, I don't know the details. I don't
06173

1 know about "confiscated by lawyers." I don't know
2 about the particular number of 26.

3 I do know that the Biological Research
4 Division within Reynolds was closed in about 1970.
5 I know that some people were laid off.

6 Q. Some people being 26 researchers?

7 A. I said I don't know the exact number.

8 Q. Okay. Let me hand you another document
9 then entitled "Summary of the First R&D Conference
10 at Sedgefield Country Club," January 19th through
11 20th, 1970.

12 Turn to page C-4, please, which is 4978.

13 A. I'm sorry. Which page?

14 Q. It's called C-4 at the top.

15 A. Okay.

16 Q. 4978. Do you recognize this as a
17 Reynolds document?

18 A. No. This is the first time I've ever
19 seen this document.

20 Q. Do you recognize the stamping on the side
21 as -- or the Bates stamping as Reynolds Bates
22 stamp, don't you?

23 A. I don't know that that's Reynolds Bates
24 stamping. These are numbers when something is
25 produced in litigation to identify this document.

06174

1 But I don't know that this is Reynolds.

2 Q. Well, I'll ask you about
3 documents -- about what documents you've seen in a
4 little bit. But is it true that animal smoke
5 studies were Project 133?

6 THE COURT: Just a minute, please.

7 MR. JAMES JOHNSON: Your Honor, I object
8 to any discussion of the contents of the document
9 because it's not in evidence, and the witness has
10 said he's never seen this document before.

11 THE COURT: Mr. Wilner?

12 MR. WILNER: Well, we're trying to
13 establish what his knowledge is based on the
14 contents here. I think it's fairly obvious. But
15 I'm trying to refresh his recollection.

16 Your Honor, I just asked him what the
17 project number was; that's all.

18 THE COURT: I'll allow him to answer
19 that.

20 Q. BY MR. WILNER: Was the animal smoke
21 study Project 133?

22 A. This document on page C-4 says or
23 suggests that the animal smoke studies and then,
24 paren --

25 THE COURT: I think I sustain the

06175

1 objection because the question now goes to the
2 veracity of the information contained in the
3 document. The document has to be properly
4 identified in the evidence before we can get into
5 what it says.

6 Q. BY MR. WILNER: Did R.J. Reynolds
7 discontinue its biologic testing in 1970?

8 A. R.J. Reynolds did discontinue the
9 Biological Research Division at about that time.
10 We were contracting biological research outside the
11 company. So it's not like we completely walked
12 away from it. In fact, we came full circle and
13 established a first rate biological and
14 toxicological effort at best.

15 Q. Well, let's go a step at a time, please.
16 Did the company discontinue its biologic research
17 in 1970?

18 MR. JAMES JOHNSON: Objection,
19 Your Honor, asked and answered.

20 THE COURT: Sustained.

21 Q. BY MR. WILNER: Let me hand you another
22 document, then. Management Bulletin from the
23 R.J. Reynolds Tobacco Company, March 19th, 1970.
24 Are you -- Does this document contain the RJR logo,
25 the circle with the RJR?

06176

1 A. Yes.

2 Q. Does it say "Management Bulletin, March
3 19th, 1970"?

4 A. Yes.

5 MR. WILNER: I offer it next.

6 MR. JAMES JOHNSON: No objection,
7 Your Honor.

8 THE COURT: All right. Sheriff, let's
9 pass that to the reporter and have that marked,
10 please, sir.

11 (Whereupon, Exhibit Number 267 was marked
12 for identification.)

13 Q. BY MR. WILNER: Let me direct your
14 attention to the bottom of this. Well, first let
15 me look at the top. This is a management
16 bulletin. Is this something that goes internal to
17 Reynolds?

18 A. I've never seen a management bulletin of
19 this sort since I've been at Reynolds.

20 Q. Okay. Well, we'll see what it says.

21 A. Sure.

22 Q. "Company to discontinue research in areas
23 not related to tobacco or subsidiaries." Talks
24 about the research force being 26 specialists in
25 fields not directly to tobacco or subsidiary

06177

1 products and services.

2 Now, your understanding was that the
3 26 scientists who were released were not related to
4 tobacco or were related to tobacco?

5 A. Well, I don't know the details. I do
6 know that it was a Biological Research Division
7 within the research and development department. I
8 do know that the majority of their effort was
9 focused on areas like starch because we had that
10 subsidiary. I also believe that there were some

11 scientists conducting some basic research to try to
12 develop exposure means or exposure methods for
13 cigarette smoke.

14 Q. And then on the bottom it says: "Note,
15 information about the reduction of the research
16 department is being released to local news media
17 today. If your employees ask questions about the
18 story, assure them that the cutback applies only to
19 people in specialized areas of research in which
20 the company is no longer interested." Did I read
21 it correctly?

22 A. You read it correctly, and I don't agree
23 with that last phrase, but --

24 Q. What do you mean you don't agree with it?

25 A. Well, because I don't think that we were

06178

1 no longer interested in biological research. We
2 were probably no longer interested in starch. But
3 the implication that we were no longer interested
4 in biology is wrong.

5 Q. Well, after 19 -- At this point, in 1970,
6 all of the experiments that involved biological
7 research on tobacco were terminated; isn't that
8 correct?

9 A. No.

10 Q. Not correct?

11 A. No. I don't believe it to be correct.

12 Q. Okay. The 26 scientists and the
13 inhalation experiments on the rats -- what happened
14 to the rats?

15 A. I don't understand what you mean.

16 Q. Well, what happened to the rats that were
17 undergoing these inhalation experiments in 1970?

18 A. You mean when the termination occurred?

19 Q. Oh, yeah.

20 A. I have no idea. Don't know.

21 Q. Well, you just gave an opinion about what
22 you think the company was interested in. Have you
23 ever read Joseph Baumgartner's testimony of what
24 happened?

25 A. No, I haven't.

06179

1 Q. If the company destroyed all of the test
2 equipment and all of the animals, would that be
3 something that you weren't aware of?

4 THE COURT: Excuse me, please.

5 MR. JAMES JOHNSON: Your Honor, there is
6 no evidence that the company destroyed any
7 equipment or animals, and I believe the question to
8 be improper.

9 MR. WILNER: Your Honor, there is
10 evidence of that. It's in the record.

11 THE COURT: And what was your question as
12 it related to that statement?

13 MR. WILNER: Well, I'll try and say it
14 again. But my question was, is that something that
15 he was unaware of.

16 THE COURT: All right. I'll overrule
17 the -- Well, I guess, to put it in the reverse
18 order, do you know about the company destroying
19 test equipment and whatever?

20 THE WITNESS: No, Your Honor. I don't
21 know that.

22 Q. BY MR. WILNER: Now, I think you
23 testified earlier that some of the research that
24 the company -- some of the biologic research that
25 was going on in 1970 that was terminated, some of
06180

1 it the company intended to use outside researchers
2 to do; is that true?

3 A. I think we've contracted with a number of
4 outside research laboratories.

5 Q. Okay. And one of those was called the
6 IBT, which was Industrial Bio-tests, correct?

7 A. We have contracted with IBT in the past.

8 Q. Okay. Let me show you a document which I
9 believe is already in evidence, but I don't know
10 the number because -- February 27th, 1973, "Review
11 of Industrial Bio-tests Manuscripts," 1973.

12 Now, this one is an R.J. Reynolds
13 document. Has a logo on it, correct?

14 A. Yes.

15 Q. And it's to Dr. Senkus from Dr. Rodgman.
16 These are people we know, right?

17 A. Yes.

18 MR. WILNER: All right. Now, I believe
19 this is already in evidence, Your Honor.

20 MR. JAMES JOHNSON: It is not,
21 Your Honor.

22 MR. WILNER: All right. We move it in.

23 THE COURT: Well, I think that -- What's
24 your position on the motion?

25 MR. JAMES JOHNSON: Your Honor, I object
06181

1 to its relevance at this point. It's certainly
2 well beyond anything that we did on direct. And I
3 think it simply prolongs the examination.

4 THE COURT: Let me see it, Sheriff.

5 MR. WILNER: Paragraph 3, Your Honor.

6 THE COURT: All right. Objection
7 overruled.

8 After that's marked, we're going to go
9 ahead, Sheriff, and take a ten-minute recess.

10 (Whereupon, Exhibit Number 268 was marked
11 for identification.)

12 (Whereupon, the jurors were excused from
13 the courtroom.)

14 (Whereupon, a 13-minute recess was taken
15 at 11:30 a.m.)

16 (Outside the presence of the jury.)

17 THE COURT: All right. Lawyers, ready
18 for the jury?

19 MR. WILNER: Yes, Your Honor.

20 THE COURT: All right. Let's have the
21 jury, please.

22 (Whereupon, the jury was seated in the
23 jury box.)

24 THE COURT: Thank you, ladies and
25 gentlemen.

06182

1 All right. Mr. Wilner, you may
2 continue.

3 MR. WILNER: Thank you, Your Honor.

4 Q. BY MR. WILNER: Dr. Townsend, did
5 Reynolds ever suppress publication of material
6 because it was worried about the legal implications

7 of a finding on a cancer test?
8 A. I've never seen any case of that.
9 Q. All right. Let me look at your -- ask
10 you to look at the document I've just handed you,
11 which is titled -- I'm sorry -- entitled -- It
12 doesn't have a title. It's just from Dr. Alan
13 Rodgman to Murray Senkus on the review of
14 Industrial Bio-tests. Now, before coming here
15 today had you seen that document?
16 A. Yes, I have.
17 Q. And you know about Industrial Bio-tests?
18 A. Well, I don't know details about that
19 company. I know they do contract, or they did
20 contract biological testing for us.
21 Q. And, in fact, what was going on in
22 1973 -- and this was after the biological labs at
23 Reynolds were closed down, correct?
24 A. That's correct.
25 Q. A certain set of samples were sent out to

06183

1 Bio-tests laboratory having to do with this
2 expanded tobacco that you were talking about
3 earlier on your direct, right?
4 A. That's right. We did an extensive
5 chemical and biological testing program for
6 expanded tobacco.
7 Q. And this was done through this contract
8 with IBT, correct?
9 A. I think IBT did some of the biology.
10 Q. And so Dr. Rodgman says: "Review of the
11 IBT manuscripts on Freon 11-expanded tobacco smoke
12 and Freon 11-containing tobacco smoke systems." So
13 what's happened here -- correct me if I'm
14 wrong -- Dr. Rodgman, the RJR researcher, has just
15 gotten back from the outside researchers their
16 report, right?
17 A. I think that's a fair assumption.
18 Q. So he says, "Well, I'm going to write to
19 you, Dr. Senkus," who's in charge of all of this.
20 "And the object is to review and revise three IBT
21 manuscripts on the biologic properties of smoke
22 from Freon 11-expanded tobacco and to recommend in
23 light of the present company posture on the smoking
24 health question, the disposition -- re:
25 Publication -- of these three manuscripts." Do you

06184

1 see that?
2 A. I see where it says that, yes.
3 Q. Now, where he says, "The present company
4 posture," what does he mean? The public posture?
5 A. I don't know what Dr. Rodgman means here
6 with those words.
7 Q. What does the word "posture" mean to you?
8 A. Well, I don't know what he means here.
9 Q. Okay. He says he's going to recommend in
10 light of the posture, the disposition -- re:
11 Publication -- of these three manuscripts. Do you
12 agree it says that?
13 A. I think you read that accurately, sure.
14 Q. Okay. So then he goes on, and he says,
15 "Recommendations" -- I don't want to take all the
16 time to read that. But let me start with here,
17 Number 3: "Because of the legal implications of

18 the results" -- and then he's got a parenthesis
19 here, and he -- Well, I'll keep reading because I
20 have to ask you about this.

21 "Because of the legal implications of
22 the results," paren, "acute toxicity study, tobacco
23 smoke produced in air killed the test animals. And
24 skin painting study controlled tobacco
25 smoke" -- "control tobacco smoke gave tumors in

06185

1 37 and a half percent of the test animals.
2 Postpone submission of these two" -- Does that say
3 two -- "but these manuscripts for publication
4 until the NCI skin painting study, now in its ninth
5 month, on expanded tobacco smoke is complete.

6 "If the results of the NCI study are
7 favorable to the RJR product, there will be no
8 urgent need to publish the IBT biological and
9 pertinent RJR chemical findings.

10 "If the results of the NCI study are
11 unfavorable to the RJR project, then revise
12 discussion of the IBT manuscripts in light of
13 differences in methodology, et cetera, between the
14 two studies." And that's a lot at one time. So
15 let me ask it a little bit at a time.

16 First of all, he talks about two kinds of
17 results. Acute toxicity study, that is, that the
18 tobacco smoke killed the test animals. And the
19 skin painting study control tobacco smoke gave
20 tumors in 37 and a half percent of the test
21 animals.

22 Let me direct your attention to the
23 second one. When he says control tobacco smoke,
24 isn't that the same thing that happened in the
25 document on Premier that we just saw, that the

06186

1 control was a commercial product? Sir?

2 A. I don't remember what the control was in
3 this study. I've seen some data that was from this
4 particular time when this was conducted. I don't
5 remember what control was.

6 Q. Well, was it the concern here that there
7 would be a public -- if they sent this thing out,
8 it would show that a cigarette manufactured by
9 R.J. Reynolds gave tumors in 37 and a half percent
10 of the test animals? Wasn't that the concern?

11 A. I don't understand that at all because it
12 was clear in the scientific community and many
13 people outside the scientific community that
14 cigarette smoke produces a positive result in mouse
15 skin painting. We've talked about that extensively
16 over the last several days.

17 Q. When you say you don't understand it,
18 what do you mean? You don't understand why they
19 were concerned here, right?

20 A. Well, I don't understand --

21 Q. According to you?

22 A. I don't understand this issue because
23 it's clear that cigarette smoke gives a positive
24 test in mouse skin painting studies, and that's
25 exactly what this says. "Control tobacco smoke

06187

1 gave tumors in 37.5 percent of the test animals."

2 Q. And evidently the publication that a

3 commercial product gave 37 and a half percent of
4 the animals cancer, they were worried about that.
5 A. Well, I don't know what they were worried
6 about. And I don't know what prompted this
7 particular -- this particular section.

8 Q. All right.

9 A. You've turned the word "control" into
10 commercial. I said I don't know what
11 control -- whether it was a commercial product or
12 whether it was a Kentucky reference.

13 I know that Dr. Rodgman has written and
14 compiled all of the chemistry and biological data
15 into a large report. And you certainly could go
16 back and look at that.

17 Q. We'll be happy to, but right now let's
18 look at this.

19 Now, let's turn to the third page. Now,
20 and you said you saw this before, correct?

21 A. I have seen this document.

22 Q. Page 4. Now, in fact -- And I don't want
23 to prolong this. But, in fact, there were three
24 manuscripts that IBT sent in, right?

25 A. It says that at the top of the document,

06188

1 yeah.

2 Q. All right. And so they're talking about
3 Manuscript A, Manuscript B and Manuscript C. And
4 this is C, the mouse skin painting study. Okay?

5 A. Okay.

6 Q. Now, they're talking now as to pro and
7 con whether they should let this information out?

8 A. Well, I think that's -- I think that's a
9 misunderstanding of the entire picture. In fact,
10 this information was presented to a number of
11 people, including the Hunter Commission in England,
12 the people in the public health community as well.

13 Q. Let's go a step at a time through this
14 document, and that's all I'm asking about right
15 there.

16 A. Okay.

17 Q. Look at page 3. Does it say, However --

18 A. I'm sorry. Page 3 or page 4?

19 Q. No. Page 3 first because you --

20 A. Okay.

21 Q. All right. "However" -- up near the top
22 of the page -- "there are several pros and cons to
23 publishing in the near future the data and findings
24 in the three IBT manuscripts." Doesn't it say
25 that?

06189

1 A. Yeah. You read that accurately.

2 Q. All right. Now, it gives a list of pros
3 and a list of cons. And I'm down on the cons at
4 page 5 to the mouse painting study. Con, which
5 means against publishing, right?

6 A. I would assume so.

7 Q. Okay. Here are the cons. "To
8 demonstrate the favorable biologic properties of
9 expanded tobacco smoke one has to publish the
10 biologic data for the control smoke. As previously
11 mentioned, it is probably widely known that RJR
12 contracted this study at IBT. Thus, we would be
13 more or less on record as having funded" -- "as

14 having funded a study in which control tobacco
15 smoke was shown to be carcinogenic to a relatively
16 high percentage, 37.5 percent, of the mice tested
17 in skin painting." Did I read that right?

18 A. You read that right.

19 Q. So the concern of Dr. Rodgman was not
20 being on record as funding a study in which 37 and
21 a half percent of the mice got cancer, true?

22 A. I'm not sure I understand this issue,
23 this concern because it was very clear in the
24 scientific literature that mouse skin painting
25 studies of this sort produces excess tumors on

06190

1 exposure to tobacco smoke.

2 THE COURT: Let's just take that pitcher
3 back there with you. All right.

4 MR. WILNER: I don't want to drop it.

5 THE COURT: Thank you.

6 Q. BY MR. WILNER: Let me see if I put this
7 in context. You say you don't understand this
8 because it was published in the literature that
9 cigarette smoke caused cancer on the backs of mice,
10 right?

11 A. The first successful experiment of that
12 sort was 1953. This is 1973. And in the
13 intervening period there were many more studies
14 done.

15 Q. Dr. Townsend, I'm trying to get there,
16 please. That's the reason you say I don't
17 understand what they were concerned about, right?

18 A. Because it was well known in the
19 scientific literature. I don't understand why this
20 should be a concern at all.

21 Q. Right. But, in fact,
22 R.J. Reynolds -- what was R.J. Reynolds, to use the
23 word here in the first page -- What was
24 R.J. Reynolds' company posture on this smoking and
25 health question with regard to whether its products

06191

1 gave cancer to animals?

2 A. What was the -- Is your question what was
3 R.J. Reynolds' position on whether skin painting
4 studies showed positive results with tobacco
5 smoke?

6 Q. No. I think it's a little different than
7 that.

8 A. All right.

9 Q. Did R.J. Reynolds have a company posture
10 that said that it just wasn't important?

11 A. No. I've never seen anything of the
12 sort.

13 Q. Did R.J. Reynolds have a company policy
14 that said mice aren't men?

15 A. I've seen discussions of the pluses and
16 minuses of skin painting and how it's, in fact, a
17 screening study. Some of that's reflected in the
18 NCI or National Cancer Institute work. But it
19 points out the differences between a skin painting
20 study and human cancer. And, in fact, the animals
21 are different. The tissues are different. The
22 dose is different. I think there's a number of
23 issues. But that doesn't negate in any way the
24 meaningfulness or the utility, rather, of using

25 skin painting studies as a screening tool for

06192

1 cigarette smoke.

2 Q. Well, did R.J. Reynolds take the public
3 position that skin painting studies were meaningful
4 or not meaningful?

5 A. I've never seen a public position taken
6 by R.J. Reynolds on that issue.

7 Q. Well--

8 A. As a scientist, I'm telling you that it's
9 a very valuable screening technique.

10 Q. How about the Tobacco Institute that
11 R.J. Reynolds was a member? Did the Tobacco
12 Institute publish things that said that there are
13 unrealistic dosage involved?

14 A. I don't know what the Tobacco Institute
15 has published. I'm a scientist.

16 Q. Oh, okay. So you don't know in light of
17 the -- if Dr. Rodgman's concern was because that
18 this data, coming from R.J. Reynolds and a contract
19 laboratory, would conflict with the public posture
20 that the company had taken because you don't know
21 what the public postures were, do you?

22 A. Well, I've said several times I don't
23 know whether or not or if there was a company
24 posture, so to speak, on this issue.

25 Q. Okay.

06193

1 A. I've never seen anything.

2 Q. All right, sir. Now, let's go on. Now,
3 Dr. Townsend, is -- you said you were a scientist.
4 Is it -- Is it acceptable scientific practice to
5 invalidate or rewrite research reports because of
6 legal concerns?

7 A. Absolutely not. Science stands on its
8 own. Legal concerns or legal issues shouldn't
9 enter into the science at all. And I'll tell you
10 that over my 21 years at R.J. Reynolds I've never
11 seen that occur.

12 Q. Thank you. And, again, tell us again who
13 Murray Senkus was?

14 A. Murray Senkus was director of research
15 and development.

16 Q. And was he so director of research in
17 1969?

18 A. I don't really recall.

19 Q. Well, he was -- he was certainly with the
20 company in 1969, correct?

21 A. I believe so, yes.

22 Q. And who is Mr. Max Crohn of the legal
23 department?

24 A. Max Crohn was a lawyer for
25 R.J. Reynolds.

06194

1 Q. And so did Murray Senkus from time to
2 time report to Mr. Max Crohn of the legal
3 department on the question of invalidating research
4 files for legal concerns?

5 THE COURT: All right. Just a minute,
6 please.

7 MR. JAMES JOHNSON: I object to reading
8 from documents that are not in evidence,
9 Your Honor.

10 THE COURT: Objection sustained.
11 If you want to talk about the topic and
12 notation of what the topic is, then that's really
13 revealing the content of the document. And in
14 order to do that, the document has to be in
15 evidence.
16 MR. WILNER: Well, first, I'll ask it.
17 If he knows.
18 Q. BY MR. WILNER: Have you
19 ever -- Dr. Senkus is still alive, isn't he?
20 A. As far as I know.
21 Q. And, in fact, his deposition has been
22 taken in legal cases, has it not?
23 A. I'm not aware of any of those details.
24 Q. Well, have you had -- He's retired now,
25 right?
06195
1 A. Yes, he's retired.
2 Q. And have you had communication with
3 Dr. Senkus directly?
4 A. About what? Or over what period?
5 Q. Well, first, about anything? Have you
6 ever talked to him?
7 A. I talked to him when I was new with the
8 company. I've talked with him several times.
9 Q. Okay. And when did he retire?
10 A. I don't really recall. I would say in
11 the -- it was in the 80s sometime.
12 Q. Certainly there was a time when he was
13 the number one guy in research, right?
14 A. I think for the chemical research
15 department, yes.
16 Q. So did you ever have a conversation with
17 Dr. Senkus about whether he had been involved in a
18 system to invalidate or rewrite research because of
19 demands of the legal department?
20 A. No.
21 Q. Okay. Then let me show you this
22 document.
23 Did I hand up two copies?
24 A. Yes. There are two copies here.
25 Q. May I retrieve one? Thank you. That was
06196
1 in error. Thank you very much.
2 All right. Now, let me ask you some more
3 questions, and then we'll get to that.
4 You testified on direct examination that
5 you have reviewed certain documents from
6 R.J. Reynolds' files. Remember that?
7 A. Yes, of course.
8 Q. So R.J. Reynolds has let you, in effect,
9 review documents from the files, fair?
10 A. It's not a matter of "let." As an RJR
11 employee, as a scientist in the department, I can
12 go into the libraries and dig out whatever
13 documents I choose.
14 Q. Okay. And you are aware about a year ago
15 R.J. Reynolds produced in connection with
16 litigation in the --
17 THE COURT: Excuse me just a minute,
18 please.
19 MR. JAMES JOHNSON: Your Honor, I object
20 to this as irrelevant with regard to what

21 R.J. Reynolds has produced in litigation and
22 prejudicial.
23 THE COURT: Well, lawyers approach the
24 bench.
25 (Whereupon, the following discussion took
06197

1 place at the bench.)
2 THE COURT: All right. Mr. Wilner, what
3 do you have to say, sir?
4 MR. WILNER: I want to hand the Court the
5 document that we're trying to talk about. And I
6 was trying to lay the foundation of this. But
7 first I'll just go ahead and tell the Court what it
8 is.

9 This document is produced by
10 R.J. Reynolds. I have independent confirmation
11 that it is produced on a list that they have stated
12 is their privileged list, that they have confirmed
13 that it is authored by Senkus, that they have
14 confirmed the date, and they have confirmed the
15 Bates stamp as coming from them and produced to the
16 Commerce Committee of the United States, that the
17 only remaining issue, if this document is
18 relevant -- I think it is because it speaks
19 directly to what we've been talking about.

20 THE COURT: What do you say to that,
21 Mr. Johnson?

22 MR. JAMES JOHNSON: There is no author on
23 that document.

24 MR. WILNER: That's true. But I could
25 prove that on their privilege log --

06198

1 THE COURT: Just a minute, please.
2 Go ahead, please, sir.

3 MR. JAMES JOHNSON: There is no author on
4 that document, Your Honor. I believe Mr. Wilner is
5 correct that it was produced at one time on a
6 privilege log in some other case. Nonetheless, I
7 don't see how that's relevant in this case,
8 particularly since, as Mr. Wilner knows, the fact
9 of the matter is that every one of the documents is
10 present and that no copies and that no documents
11 were irretrievably lost in the process described
12 here.

13 But, as far as Senkus preparing this
14 document, to my knowledge Senkus says he doesn't
15 know who prepared the document.

16 MR. WILNER: Let me get my privilege log,
17 please. May I, Your Honor?

18 THE COURT: Well, just a minute. Let me
19 look at what's in the document.

20 MR. WILNER: Okay.

21 THE COURT: Well, I think the first
22 question is authentication of the document. Now --

23 MR. WILNER: I can do it.

24 MR. JAMES JOHNSON: May I point out,
25 Your Honor, that the document was at one time on a

06199

1 privilege log in some other case. I do want to
2 note that reference to other litigation is
3 prejudicial here.

4 But, secondly, that document was taken
5 off the privilege log because Dr. Senkus was shown

6 the document, and he said, "I don't know who did
7 this document. I don't think I did." Therefore,
8 we felt that we couldn't maintain it as a
9 privileged document anymore. Therefore, we
10 deprivileged it because we don't know who prepared
11 it.

12 MR. WILNER: Your Honor, here is -- here
13 is a printout from the privilege log that they
14 filed to the Congress -- to the Congress committee
15 of the United States. And it's in machine readable
16 form, so I had to print it. But that is the
17 document. And that matches everything about it,
18 including the date and the Bates stamp.

19 So they've taken the position that -- who
20 wrote it. Now they say it's up in question. I
21 don't think it even matters.

22 And where's the testimony that they've
23 talked to Senkus? I haven't heard it. They could
24 say anything about it.

25 THE COURT: Well, of course I have to
06200

1 look at this as being just a piece of paper until
2 there's some competent evidence as to what it is.

3 MR. WILNER: They've admitted that they
4 produced it, and they've admitted that they
5 produced this privilege log.

6 THE COURT: Well, just a minute. Keep
7 your voice down. To whom did they make that
8 admission?

9 MR. WILNER: I just heard them. And he
10 just said that. And, secondly, as to -- as to
11 where I got the privilege log -- This is like where
12 I got a copy of the document. I can testify as an
13 officer of the court that that privilege log is the
14 log that they have used in front of the Commerce
15 Committee.

16 THE COURT: You can't deal in this.

17 MR. WILNER: As to uncontested matters, I
18 can, Your Honor. And this is an uncontested
19 matter. They do not disagree that they produced a
20 privilege log saying that on it. There's no other
21 way I can prove anything, except that I'm standing
22 here. And they would have to be able to say
23 something. And this is their privilege log in the
24 front of the Commerce Committee, having produced it
25 in front of the Commerce Committee.

06201

1 It's now a question of -- They say
2 they're not sure anymore who wrote it. Well,
3 okay. Maybe they are, maybe they're not. But they
4 have taken the position previously that it would be
5 impossible otherwise to identify any document other
6 than what's been identified here.

7 THE COURT: Well, you will have to
8 explain to me, what is the privilege log?

9 MR. WILNER: They, as part of their
10 production to the Commerce Committee of the United
11 States -- which is another issue. We're not taking
12 the position that they necessarily waive their
13 privileges. Fine. Who cares?

14 But they produced a series of documents
15 to the Commerce Committee of the United States from
16 which I represent, as an officer of the court, that

17 document was retrieved. Now, that may not be
18 enough. I understand. So as part of their
19 production to the Commerce Committee, they produced
20 a privilege log. They produced the privilege
21 log --

22 THE COURT: Keep your voice down.

23 MR. WILNER: I'm sorry. In machine
24 readable form, so that it doesn't -- it isn't a
25 piece of paper they produced. It's a disk with all

06202

1 their documents on it.

2 THE COURT: What does it mean, is my
3 question.

4 MR. WILNER: All it means is they
5 authenticate the document because they show the
6 Bates stamp, and they acknowledge it came from
7 their company, and they give an author as Senkus
8 and a recipient as Crohn, and a date. So --

9 THE COURT: Why is it called privileged?

10 MR. WILNER: They claimed a privilege,
11 attorney-client privilege with respect to it. So
12 having done so --

13 THE COURT: Okay. You've answered my
14 question.

15 MR. JAMES JOHNSON: May I point out,
16 Your Honor, that we withdrew the privilege when we
17 talked to Senkus and said, "Did you prepare this
18 document?" And he said no.

19 THE COURT: Well --

20 MR. JAMES JOHNSON: So we don't know who
21 the author is. Thus we don't know. If we don't
22 know if it is a business record -- In fact, it is
23 not a business record of the company. It is pure
24 hearsay. We don't know who the author is. And,
25 indeed, while it may have ended up in the files of

06203

1 the company -- and it did end up in the files of
2 the company; I certainly can't deny that to
3 you -- that doesn't make it admissible.

4 THE COURT: Who is Max Crohn? Has that
5 already been established?

6 MR. JAMES JOHNSON: Yes. It was
7 established that Max Crohn was a lawyer who worked
8 at one time for R.J. Reynolds, but we don't know
9 who wrote that document.

10 THE COURT: Well, I think that --

11 MR. JAMES JOHNSON: There is -- There is
12 no hearsay exception to which that document
13 applies, Your Honor.

14 THE COURT: What do you say on the
15 hearsay objection?

16 MR. WILNER: Well, it's a statement of a
17 party because it, first of all --

18 THE COURT: Which of the hearsay
19 exceptions do you take it to apply?

20 MR. WILNER: 803.1.2. Senkus --

21 THE COURT: 803.1.2?

22 MR. WILNER: A and C. It's a statement
23 by their research director.

24 MR. JAMES JOHNSON: It is not,
25 Your Honor. There is no author on that document.

06204

1 MR. WILNER: Well, but they've stated

2 elsewhere that there is. And so now they have
3 a -- They can't decide who wrote it, but I don't
4 have to accept that.

5 THE COURT: Well, I'm going to admit the
6 document. I think it is in the nature of an
7 admission against interest, the exception.

8 Now, I have to say this, that it's clear
9 to me from this discussion that the plaintiffs
10 cannot establish the author of the document, at
11 least it doesn't sound like it. But, on the other
12 hand, it also is clear to me the document by its
13 content appears to be having -- appears to have
14 been done in the context of someone with some
15 official duty in its preparation and dissemination
16 with the defendant company.

17 MR. JAMES JOHNSON: May I just state for
18 the record, Your Honor, that this document was
19 prepared by someone, and who knows what that
20 person's duties were or knowledge was or anything
21 like that. There's no foundation for that. It is
22 highly prejudicial. And under 403 -- Under 403 I
23 would ask that it be excluded as well.

24 THE COURT: Well, this is communication
25 in the files of R.J. Reynolds to the lawyer for

06205
1 R.J. Reynolds about the business, at least it
2 appears from the content of the document, of
3 R.J. Reynolds.

4 MR. JAMES JOHNSON: But it's not relevant
5 to any issue in this lawsuit, Your Honor.

6 THE COURT: Well, now, of course they're
7 claiming concealment, Mr. Johnson. Obviously they
8 want to argue that this is a part of their claim of
9 fraudulent concealment. So I overrule the
10 objection.

11 Now, let me say this too, that I think
12 Mr. Johnson's obligation about produced in other
13 litigation, he's objected to that, and I sustained
14 the objection. This jury's only interested in one
15 piece of litigation, and that's this trial.

16 MR. WILNER: Yes, Your Honor.

17 THE COURT: So --

18 MR. WILNER: Yes, Your Honor I
19 understand.

20 THE COURT: All right.

21 MR. WILNER: Not an issue. Thank you.

22 (Whereupon, the bench conference is
23 concluded.)

24 MR. WILNER: Your Honor, with the
25 accordance of the ruling, we ask that the document

06206
1 dated December 18th, 1969, to Mr. Max Crohn of the
2 legal department be marked as our next number.

3 (Whereupon, Exhibit Number 269 was marked
4 for identification.)

5 Q. BY MR. WILNER: Dr. Townsend, ready?
6 Dr. Townsend, let me ask you some questions on this
7 document that we've just shown you. And first let
8 me ask you, have you ever seen it before?

9 A. I have recently.

10 Q. How? How did you come to see it?

11 A. This was produced in litigation.

12 Q. Well, I understand that, that you were

13 telling me earlier you were just a scientist. So
14 why were you interested in it? And you don't need
15 to tell me the details of litigation. But why did
16 you come to --

17 A. Why am I interested in it?

18 Q. Yeah.

19 A. Because it deals with research department
20 documents.

21 Q. Who showed it to you?

22 A. A lawyer showed it to me.

23 Q. Had you seen it before?

24 A. Before?

25 Q. I'm sorry. I wasn't clear.

06207

1 A. Before the first time?

2 Q. When was the first time you saw it?

3 A. I can't recall. It's been within the

4 last six, eight months, nine months perhaps.

5 Q. Okay. And you remember who Mr. Max Crohn
6 was, right?

7 A. I know Max Crohn.

8 Q. Okay. And this says, "R-e: Invalidation
9 of some reports in the research department. We do
10 not foresee any difficulty in the event a decision
11 is reached to remove certain reports from research
12 files. Once it becomes clear that such action is
13 necessary for the successful defense of our present
14 and future suits, we will promptly remove all such
15 reports from our files." Do you see that?

16 A. I see that.

17 Q. Now, is that proper? If that was written
18 by someone from the research department, would that
19 be the proper way to conduct a research department?

20 A. Absolutely not. I was shocked when I saw
21 this.

22 Q. As a rule, it says we invalidate about
23 15 reports each year for various reasons. The most
24 common reasons for invalidating reports are -- and
25 it gives a list -- discoveries of inaccuracies,

06208

1 blah, blah, blah, needless reports.

2 As to the reports which you are
3 recommending to be invalidated, we can cite
4 misinterpretation of data as reason for
5 invalidation. A further reason is that many of
6 these are needless reputations and are being
7 removed to alleviate overcrowding of our files. As
8 an alternative to invalidation we can have the
9 authors rewrite those sections of the reports which
10 appear objectionable. Do you see that?

11 A. Yes.

12 Q. How many -- Let me ask you this: You've
13 looked through reports that were written by
14 Dr. Teague and Dr. Rodgman, correct?

15 A. Sure.

16 Q. And others?

17 A. Oh, and others, sure.

18 Q. How many of those reports had the authors
19 rewritten because they were objectionable to the
20 legal department?

21 A. I've never seen a case where that's
22 happened. And in my 21 years at R.J. Reynolds
23 that's never happened. And I'll tell you if that

24 were the practice at R.J. Reynolds, I wouldn't be
25 working there.

06209

1 Q. I appreciate that. But if you went back
2 to a report in 1960 or 64, before you got there,
3 how would you know?

4 A. Well, I suppose I wouldn't. I'm telling
5 you my experience at Reynolds. And if that were
6 the practice, I wouldn't be at Reynolds.

7 Q. This dates from 1969?

8 A. The date on this page is December 1969.

9 Q. And were you at Reynolds then?

10 A. No, I wasn't.

11 Q. Now, since you found this or you were
12 shown this document, you didn't go back to the
13 research director and ask him about it?

14 A. Let me tell you what I did do. I didn't
15 talk to the research director. I did go to the
16 library and to our files and determined whether I
17 could find documents to determine whether documents
18 had been destroyed. And I didn't find any evidence
19 that this was actually done. I didn't find any
20 evidence whatsoever in the dual-ledger system and
21 going back and pulling out the reports from
22 microfilm that any documents were destroyed. And
23 I'm telling you that that's serious for a
24 scientist. It's serious for a business, if it
25 happened. I found no evidence whatsoever that it

06210

1 happened. And if that were the practice, I
2 wouldn't be working there.

3 Q. Okay. So you say you didn't find any
4 evidence that documents were destroyed?

5 A. Absolutely.

6 Q. What evidence is it when a document is
7 gone?

8 A. We have a dual-ledger reporting system
9 that tracks -- And let me describe this for the
10 jury.

11 There's a dual-ledger system. And when a
12 scientist decides that they need to write a
13 research report, to actually write their data up in
14 a report they go to the library. They tell the
15 librarian that they need a report number. The
16 librarian asks for a title, a subject and some
17 details about that report.

18 At that point the scientist hasn't
19 started writing. They want the report number. So
20 that's in one ledger. Then when the scientist
21 finishes writing the report, that person then goes
22 back to the library with the final report, and
23 that's entered in a second ledger.

24 So you have the first ledger showing the
25 intent to write the memo, the second ledger showing

06211

1 completion of the memo and showing where it was
2 distributed to. So it's a way of -- it's a double
3 bookkeeping system, if you will, to ensure proper
4 recording.

5 Q. And so if the person or persons who we're
6 talking about were moving or rewriting
7 documents -- Well, let's talk about removing
8 documents. You don't think they knew about that

9 system, about this double system? Didn't they know
10 about that?

11 A. About whom in particular? I'm not sure I
12 understand your question.

13 Q. The author of this document and Max
14 Crohn?

15 A. Well, there is no author indicated on
16 this memorandum, so I don't know.

17 Q. Yeah.

18 A. But I'm telling you what the R&D library
19 system is --

20 Q. Well, hold on a minute. I understand
21 that. But what I'm asking is, did Mr. Crohn know
22 about how the library system is --

23 A. I have no idea what Mr. Crohn knew.

24 Q. Well, the document says: "We don't
25 foresee any difficulty." Now, if they were in a

06212

1 double-bind system here, then certainly -- if you
2 remove one and you left a trace, that would be
3 difficulty, right?

4 A. Well, let me tell you because I've been
5 through the dual-ledger system in detail. It's
6 handwritten in ink in a binder, in a permanently
7 bound book. Once you write in that book, I don't
8 see how one could go back and remove evidence of
9 what's written there.

10 And I'm telling you that I went in to the
11 microfilms, and I found -- I'm convinced that
12 documents haven't been destroyed. There's no
13 question whatsoever in my mind.

14 Q. Now, let me then hand you another
15 document based on what you've just said.

16 Now, you recognize Claude Teague's
17 signature, don't you?

18 A. Sure.

19 Q. And that's another R.J. Reynolds document
20 dated what day?

21 A. This one-page memorandum is dated
22 November 1975.

23 MR. WILNER: Okay. I move it in.

24 MR. JAMES JOHNSON: Object on the same
25 grounds that was stated up at the bench conference,

06213

1 Your Honor.

2 THE COURT: Sheriff, let me see the
3 document.

4 Lawyers approach the bench.

5 (Whereupon, the following discussion took
6 place at the bench.)

7 THE COURT: I don't quite understand the
8 basis of the objection.

9 MR. JAMES JOHNSON: Your Honor, that it's
10 not relevant, that its probative value is
11 outweighed by its prejudicial effect under 403,
12 that no exception to the hearsay rule has been
13 established.

14 MR. WILNER: Claude Teague is a director
15 of research. It's an admission of a party,
16 admission against interests. It's from the party's
17 own files. He's authenticated it.

18 THE COURT: Objection overruled.

19 (Whereupon, the bench conference is

20 concluded.)
21 (Whereupon, Exhibit Number 270 was marked
22 for identification.)
23 Q. BY MR. WILNER: Now, Dr. Teague [sic],
24 you just said you never saw anybody destroy a file
25 at R.J. Reynolds?

06214

1 A. That's not exactly what I said. What I
2 said was I'm convinced that no library reports,
3 reports that the library has custody of, were
4 destroyed, period.

5 Q. All right. So would you read the
6 document that I just handed you?

7 A. Sure. Be happy to. This is a document
8 from Claude Teague to Frank Colby, who was the
9 librarian at R.J. Reynolds Research and Development
10 department. It says: "This is to inform you that
11 I've either returned to the library or destroyed
12 all formal reports and the like checked out to
13 me." Signed, "Claude Teague."

14 Q. Now, does it say, "I've returned to the
15 library or destroyed"? Is that what it says?

16 A. Well, I think I read it accurately. It
17 says, "This is to inform you that I have either
18 returned to the library or destroyed all formal
19 reports and the like checked out to me."

20 Q. "Or"? It says "or," right?

21 A. I think I read it accurately, sir.

22 Q. Okay. So some reports Dr. Teague
23 returned to the library, and some other ones he
24 destroyed? Is that what it says?

25 A. I think that's pretty clear.

06215

1 Q. Okay. Which ones did he destroy?

2 A. I think it's very clear because we clean
3 our files -- Scientists and company files, our
4 research and development department employees clean
5 their files. I think Dr. Teague here, like the
6 rest of us, including myself, go through our
7 files. We purge documents and clean out our
8 files.

9 And documents -- Research and development
10 department documents may be circulated to 10 or
11 20 people or more. And each one of those people
12 may keep -- choose to keep the report, or they may
13 choose to destroy it.

14 But the library has the original copy.
15 The library maintains complete control over those
16 original copies, and the original copies are not
17 destroyed, even though individual scientists may
18 destroy their own copies. I think that's exactly
19 what Dr. Teague is talking about here.

20 Q. So you think it's basically
21 housekeeping?

22 A. I think there are a lot of documents. I
23 think all of us periodically go through our files
24 and will clean our files, keep only those that we
25 have real need for, the originals -- the original

06216

1 documents are maintained and controlled by the
2 research and development department library. The
3 individual scientists within the R&D department may
4 choose to destroy their documents, return them to

5 the library or whatever they choose.

6 Q. Dr. Townsend, if it was only
7 housekeeping, why was it limited to formal
8 reports?

9 A. It says it wasn't limited. He says very
10 clearly here, "All formal reports," comma, "and the
11 like," comma. So he doesn't say it was limited to
12 formal reports.

13 Q. All right. But he includes formal
14 reports?

15 A. Sure.

16 Q. Okay.

17 A. We keep very tight control over formal
18 reports, the distribution. We know where copies
19 go. We know to which employees copies are sent.
20 And all Dr. Teague is doing in this memorandum,
21 like many of us do, is informing the librarian that
22 he no longer has those copies. The library,
23 however, has the original.

24 THE COURT: Well, this may be, ladies and
25 gentlemen, an appropriate time for us to recess.

06217

1 And, Sheriff, we'll come back at
2 2:00 o'clock.

3 (Whereupon, the jurors were excused from
4 the courtroom.)

5 (Whereupon, the lunch recess was taken at
6 12:29 p.m.)

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06218

1 COURT REPORTER'S CERTIFICATE

2 STATE OF TENNESSEE:

3 COUNTY OF SHELBY:

4 I, LORI-ANN MASON, RPR, do hereby certify:

5 1. The foregoing transcript of proceedings
6 was taken before me at the time and place stated in
7 the foregoing styled cause with the appearances as
8 noted;

9 2. Being a Court Reporter, I then reported
10 the transcript of proceedings in Stenotype to the
11 best of my skill and ability, and the foregoing
12 pages contain a full, true and correct transcript
13 of my said Stenotype notes then and there taken;

14 3. I am not in the employ of and am not
15 related to any of the parties or their counsel, and

16 I have no interest in the matter involved.

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19

20 Lori-Ann Mason, RPR
Notary Public at Large
State of Tennessee

21

22 My commission expires:

23 August 29, 2001

24

25

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1 INDEX OF PROCEEDINGS

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3 March 29, 1999

4 (Morning Session)

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8 WITNESS: PAGE

9 DAVID TOWNSEND

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11 CROSS-EXAMINATION (Cont'd.)

12 BY MR. WILNER..... 6141

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06220

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2 E X H I B I T S

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4

5 EXHIBIT NUMBER PAGE

6

7 Exhibit Number 265 was marked for
identification..... 6143

8

9 Exhibit Number 266 was marked for
identification..... 6170

10 Exhibit Number 267 was marked for

identification..... 6176

11

12 Exhibit Number 268 was marked for
identification..... 6181

13 Exhibit Number 269 was marked for

identification..... 6206

14

15 Exhibit Number 270 was marked for
identification..... 6213